TAX INCENTIVES FOR ATTRACTING FOREIGNERS TO ITALY
ITALY

GIOVANNI IZZO
FOUNDING PARTNER, IPGLEX&TAX

FRANCESCO CITERNI
SENIOR ASSOCIATE

INTRODUCTION

In recent years, the Italian legislature has adopted many legislative measures in the fiscal field aimed at making Italy more attractive and competitive for companies and individuals, Italian or foreign, intending to operate in Italy.

In particular, the tax regimes currently in force in Italy, implemented to attract foreign individuals or to attract back people who were previously Italian residents or citizens, are:

– the "resident not domiciled" (*res non-dom*) regime, a favorable tax regime applicable on income earned abroad by Italian and non-Italian citizens who transfer their tax residence to Italy, according to Article 24*bis* of the Presidential Decree No. 917/1986 (**TUIR**);
– the "inbound workers" regime, a favorable tax regime applicable to workers who transfer their tax residence to Italy, according to Article 16 of the Legislative Decree No. 147/2015;
– the "foreign pensioners" regime, reserved for individuals with pension income from abroad who transfer their tax residence to specific municipalities in Italy, according to Article 24*ter* TUIR;
– the regime applying to teachers and researchers who move their tax residence to Italy to work there, according to Article 44 of the Legislative Decree No. 78/2010.

I. ITALIAN RESIDENCY CRITERIA

Considering that the above-listed regimes are all aimed at and based on the transfer of residence to Italy, it is worth going through how the Italian legislation deals with the concept of residence.

The residence conditions are defined in Article 2 TUIR, which provides for two alternative criteria based on a mix of formal and substantial prerequisites. In particular, an individual is considered to be a resident for tax purposes in Italy alternatively:

i. if he or she is recorded into the register of Italian residents of the municipality in which he or she resides (**Anagrafe**);
ii. if he or she is domiciled or has residence in Italy in accordance with the Italian Civil Code for most of the year.[1]

As far as the first criterion is concerned, we point out that it consists of a formal condition, as individuals have to file an application in order to be registered in the Anagrafe so as to be resident or domiciled in a specific Italian municipality. According to the Italian fiscal jurisprudence, as long as individuals do not delete their registration from the Anagrafe, they are considered to be residents in Italy for tax purposes even if they transfer their residence abroad. For such purposes, the individuals registered in the Anagrafe are considered, in application of the formal criterion under scope, in any case resident, and therefore taxable individuals in Italy; with the consequence that since the registration precludes any further assessment, the mere transfer of residence abroad is not relevant until the cancellation from the Anagrafe results.[2]

Regarding the second criterion, the domicile is based on a factual condition. It consists of where an individual has established the principal center of his or her business and interests. According to a minority interpretation, the words "business and interests" express an exclusively economic and patrimonial concept.[3] The majority interpretation considers that a more extensive meaning should be attributed to this expression, including both patrimonial and moral interests.[4] The Italian jurisprudence is oriented in this latter interpretation.[5] In order to verify where the individual's domicile is located, a substantial analysis of

1. Art. 43 Italian Civil Code.
2. Supreme Court, decision No. 16634, 25 June 2018; Supreme Court, decision No. 21970, 28 October 2015; Supreme Court, decision No. 677, 16 January 2015.
3. S. Pugliatti, *Istituti di diritto civile*, Milano, 1943, 272; S. Romano, *Ordinamento sistematico del diritto civile*, I, Napoli, 1968, 134.
4. V. Tedeschi, "Domicilio, residenza e Dimora", in *NN.D.I.*, VI, Torino, 1960, 194; F. Carnelutti, "Note critiche intorno ai concetti di domicilio, residenza e Dimora", in *Studi di diritto civile*, Roma, 1916, 6.
5. Supreme Court, decision No. 5006, 8 March 2005; Supreme Court, decision No. 2936, 5 May 1980; Supreme Court, decision No. 435, 12 February 1973.

420457ZZO_RIP_N13_CC2021_PC.indd 19 23/11/2023 14:05:21

the person's interests shall be carried out: priority shall be given to the place where the moral interests are located.[6]

Still regarding the second criterion, the residence consists in the place where an individual owns his or her habitual abode.[7] This notion includes the objective element of permanence in a specific place and the subjective element of the intention to live there permanently, as revealed by the individuals' living habits and their conduct of daily social relations.[8] Everyone who is a resident under this criterion is legally obliged to register together with those under his or her parental authority or guardianship in the Anagrafe.

Regardless of the applicable criteria and formal registration with the Anagrafe, it shall be noted that the individuals are considered to be a resident in Italy for tax purposes if their above-mentioned residence conditions occur for at least more than 183 days (although not consecutive) during a fiscal year.

It is worth pointing out that, during the first fiscal year, when a foreigner transfers his or her tax residence to Italy, there may be a potential double taxation risk with the country of origin. Notably, this depends on the fact that the Italian tax law does not provide any split-year rule concerning tax residence. The rule under scope aims at settling the potential double taxation controversy during the fiscal year when an individual moves from one country to another. Generally, the split-year rule provides that as soon as the conditions for being considered tax resident in the country of destination are met, the individual shall cease to be resident in the country of origin.

For the sake of completeness, it is useful to underline that the OECD Model Convention[9] has established particular criteria (the so-called tiebreaker rules) in order to determine the actual State of residence if, in application of the various national laws, the individual is considered to be resident in more States.

As far as the first criterion, it consists of holding a permanent habitation. If the individual owns one habitation in only one State, this is presumed to be the country of residence.

If the individual owns real estate in more States, the second criterion applies. The individual will be deemed to be resident in the State where his or her personal and economic relations are conducted (the so-called center of vital interests). This includes family and social relationships as well as business interests. If these kinds of relations are placed in different States (social relations in one country and economic interests in another country), the individual will be considered a resident in the country where the family relations are conducted.

If it is not possible to determine the State in which the individual has his or her center of vital interests, the third criterion provides that the person will be deemed to be resident in the State where his or her habitual abode is located.

If the individual has an habitual abode in more States, the fourth criterion applies. He or she will be considered to be a resident only in the State of which he or she is a national.

If the individual has the nationality of more than one State, the last criterion provides that "the competent authorities of the contracting states shall settle the matter by mutual agreement."

In any case, verifying the provisions (if any) set forth by the convention against double taxation signed between Italy and the country of origin is advisable.

The TUIR also provides a rebuttable presumption related to Italian citizens who remove their registration from the Anagrafe and transfer their residence to a country listed in the Finance Ministry Decree of 4 May 1999:[10] those individuals are considered to still be residents in Italy unless they can prove that their transfer of residence is effective, e.g., business or working reasons or absence of interests or ties with Italy.

II. ORDINARY TAX BRACKETS

In addition to the above, for the sake of completeness of this essay, it is worth pointing out the tax rates applied to individuals in Italy are defined by four tax brackets:

a) up to €15,000, the relevant tax rate is 23%;

b) between €15,001 and €28,000, the relevant tax rate is 25%;

c) between €28,001 and €50,000, the relevant tax rate is 35%;

d) above €50,001, the relevant tax rate is 43%.

6. Supreme Court, decision No. 9723, 13 May 2015; Supreme Court, decision No. 20285, 4 September 2013.

7. Art. 43 Italian Civil Code.

8. Supreme Court, decision No. 3841, 15 February 2021; Supreme Court, decision No. 25726, 1 December 2011.

9. The OECD Model Convention was developed by the Organization for Economic Co-operation and Development to which the member States, including Italy, draw on to draft and stipulate tax treaties against double taxation.

10. Art. 2(2*bis*) TUIR; according to Article 1 of the Decree of the Ministry of the Economy and Finance of 4 May 1999: "Are considered tax-privileged [...] Alderney (Aurigny); Andorra (Principat d'Andorra); Anguilla; Antigua e Barbuda (Antigua and Barbuda); Antille Olandesi (Nederlandse Antillen); Aruba; Bahama (Bahamas); Bahrein (Dawlat al Bahrain); Barbados; Belize; Bermuda; Costa Rica (Republica de Costa Rica); Dominica; Emirati Arabi Uniti (Al-Imarat al-'Arabiya al Muttahida); Ecuador (Repuplica del Ecuador); Filippine (Pilipinas); Gibilterra (Dominion of Gibraltar); Gibuti (Djibouti); Grenada; Guernsey (Bailiwick of Guernsey); Hong Kong (Xianggang); Isola di Man (Isle of Man); Isole Cayman (The Cayman Islands); Isole Cook; Isole Marshall (Republic of the Marshall Islands); Isole Vergini Britanniche (British Virgin Islands); Jersey; Libano (Al-Jumhuriya al Lubnaniya); Liberia (Republic of Liberia); Liechtenstein (Furstentum Liechtenstein); Macao (Macau); Malaysia (Persekutuan Tanah Malaysia); Maurizio (Republic of Mauritius); Monserrat; Nauru (Republic of Nauru); Niue; Oman (Saltanat 'Oman); Panama (Republica de Panamá); Polinesia Francese (Polynesie Francaise); Monaco (Principauté de Monaco); Sark (Sercq); Seicelle (Republic of Seychelles); Singapore (Republic of Singapore); Saint Kitts e Nevis (Federation of Saint Kitts and Nevis); Saint Lucia; Saint Vincent e Grenadine (Saint Vincent and the Grenadines); Svizzera (Confederazione Svizzera); Taiwan (Chunghua MinKuo); Tonga (Pule'anga Tonga); Turks e Caicos (The Turks and Caicos Islands); Tuvalu (The Tuvalu Islands); Uruguay (Republica Oriental del Uruguay); Vanuatu (Republic of Vanuatu); Samoa (Indipendent State of Samoa)."

420457ZZO_RIP_N13_CC2021_PC.indd 20 23/11/2023 14:05:21

III. "NEO-RESIDENTS" REGIME

As of 1 January 2017, Article 24*bis* TUIR has introduced a favorable tax regime aimed at encouraging wealthy individuals to transfer their tax residence to Italy and benefit from a substitute tax on income earned abroad.

A. Overview

In order to benefit from the regime under scope, individuals, regardless of their nationality (therefore including Italian citizens), must transfer their tax residence from a foreign country to Italy. In addition, relevant individuals must prove to have been resident outside of Italy for at least nine of the last ten fiscal years.[11]

For an overview of when an individual is considered to be a resident for tax purposes in Italy, please refer to title I above.

B. Benefits

Under the conditions mentioned above, the individuals who transfer their tax residence to Italy may benefit from a substitute tax on income earned abroad.

This income is identified by the criteria outlined in the TUIR, according to which "income is deemed to be earned abroad based on criteria that are reciprocal to those outlined in Article 23 for identifying income earned in the territory of the State."[12] Therefore, the regime applies to:

(i) income deriving from land and buildings located abroad;

(ii) capital income paid by foreign States or by non-residents;[13]

(iii) employment income deriving from activities carried out abroad;

(iv) self-employment income and business income deriving from activities carried out abroad through permanent establishment;

(v) capital gains generated by the sale of portfolio shareholdings in foreign companies;

(vi) miscellaneous income deriving from activities carried out abroad and from assets located abroad.[14]

The application of this regime entails the payment of an annual substitute tax equal to €100,000, regardless of income (**Flat Tax**). The payment of the Flat Tax will cover all foreign income generated by the taxpayer.[15]

The Flat Tax regime also grants other benefits:

(i) it replaces any tax obligation on foreign-source income due in Italy;[16]

(ii) it exonerates the taxpayer from reporting the investments and assets held abroad;[17]

(iii) It exonerates from paying the ordinary Italian taxes on foreign real estate and financial assets held by residents (the so-called IVIE and **IVAFE** taxes);[18]

(iv) it exempts the payment of inheritance and donation taxes on all foreign assets (these taxes would be paid only for assets present in Italy at the time of the inheritance or donation);[19]

(v) the Italian Controlled Foreign Companies regime[20] does not apply to companies held abroad that fall under the scope of the regime;[21] and

(vi) with respect to the international treaties against double taxation, individuals who opt for the Flat Tax regime are considered as "residents" for "double tax treaty" purposes (since their whole income is taxed in Italy) unless specific treaties stipulate otherwise.[22]

The Flat Tax must be paid in a lump sum no later than the income tax payment deadline (currently June 30 of every year concerning the previous tax year[23]).

C. Family Members

The relevant taxpayer may also extend the Flat Tax regime to one or more family members[24] (including spouses, children, parents, children-in-law, parents-in-law, siblings) who meet the conditions illustrated above.[25]

In order to extend the regime, the taxpayer must flag a specific field in his or her tax return related to the fiscal year when the family member transfers his or her tax residence to Italy or in the next one.[26] In this case, the

11. Art. 24*bis*(1) TUIR.
12. Art. 165(2) TUIR; Art. 23 TUIR.
13. Resolution No. 12/E/2021 of the Italian Tax Authority.
14. Resolution No. 12/E/2021 of the Italian Tax Authority.
15. Art. 24*bis*(2) TUIR.
16. Art. 5.1 Circular No. 17/2017 of the Italian Tax Authority.
17. Art. 5.2 Circular No. 17/2017 of the Italian Tax Authority.
18. Art. 5.2 Circular No. 17/2017 of the Italian Tax Authority.
19. Art. 5.3 Circular No. 17/2017 of the Italian Tax Authority.
20. Art. 167 TUIR; the Controlled Foreign Companies regime is aimed at preventing possible tax avoidance. The regime provides that income generated by foreign companies controlled by Italian residents, located in States with favorable fiscal systems, are taxed in Italy.
21. Art. 2.3 Circular No. 17/2017 of the Italian Tax Authority.
22. Art. 7 Circular No. 17/2017 of the Italian Tax Authority.
23. Art. 5.1 Circular No. 17/2017 of the Italian Tax Authority.
24. Art. 433 Italian Civil Code.
25. Art. 24*bis*(6) TUIR.
26. Art. 2.2 Ruling dated 8 March 2017 of the Italian Tax Authority.

420457ZZO_RIP_N13_CC2021_PC.indd 21 23/11/2023 14:05:22

Flat Tax is reduced to €25,000 for each family member to whom the effects of the regime have been extended.[27]

D. Exceptions

The only exceptions from the application of the Flat Tax regime concern:

(i) income and capital gains produced in Italy, which remain subject to the payment of personal income tax (hereinafter, "**IRPEF**"), taxed at up to 43% plus local additions; and

(ii) for the first five years, capital gains from the sale of a "qualified participation" in a company, being such assets taxed according to ordinary Italian tax rules.[28]

E. Ruling to the Italian Tax Authority

As clarified by the Italian Tax Authority (**Italian Revenue Agency** or **IRA**), the taxpayers can apply for a prior tax ruling with the IRA itself[29] asking for a confirmation on whether the mandatory conditions for benefitting from the Flat Tax regime are met.

The ruling can also be submitted before transferring the tax residence to Italy; in such a case, the effectiveness of the request remains conditional upon the transfer of the tax residence to Italy by the applicant during the relevant tax period.

In any case, the tax ruling cannot be submitted once the taxpayer has already benefitted from the regime.

In case the IRA's assessment results in non-compliance with the mandatory conditions for benefitting from the Flat Tax regime, the ruling request will be declared invalid.[30]

However, individuals who do not intend to submit the ruling request, assuming that all the above conditions required by Article 24*bis* TUIR are met, may exercise the relevant option by flagging the appropriate fields in their personal income tax return. In this case, the taxpayer must be able to provide all valuable elements to allow the Italian Tax Authority to verify the requirements provided by the law.

The option is fulfilled, alternatively, by submitting the income tax return:

(i) as of the tax period in which the taxpayer transferred his or her tax residence to Italy; or

(ii) as of the following tax period.[31]

In any case, the relevant taxpayer may choose not to benefit from the Flat Tax regime on income derived from certain foreign States, both for himself or herself or on behalf of one or more of his or her family members. To this extent, he or she must indicate these countries in the income tax return when the option is exercised or modified. Consequently, the income produced in the countries disclosed[32] will be subject to the ordinary IRPEF regime. This choice may allow the taxpayer to benefit from any possible reduced taxation existing in these countries as well as possible foreign tax credits in Italy.

F. Duration

The Flat Tax regime:

(i) can be opted starting from the fiscal year when the applicant has transferred his or her tax residence in Italy or from the subsequent one;

(ii) is automatically renewed every fiscal year;[33] and

(iii) can last for a maximum of 15 years, when its effects cease without any possibility for a further continuation for the taxpayer and the potential family members who benefitted from the regime.

The taxpayer and his or her family members can withdraw from the regime at any time without any consequence on the previous fiscal years. In the case the taxpayer (or the family member) revokes the Flat Tax regime option, he or she will not be allowed to re-opt for it in the future.[34]

However, the Flat Tax regime shall cease in the event of total or partial failure to pay the substitute tax due within the legal terms, as well as if the taxpayer transfers his or her tax residence outside of Italy.

G. Special Cases

1) Focus–Income Held Through a Third Party

A peculiar case that is interesting to analyze concerning the Flat Tax regime is related to income held by a new resident through a third party (a non-resident company, a trust, etc.).

As a general rule, stated by Article 23 TUIR, if an individual qualifies as the direct owner of income deriving from Italian sources, the amount under scope shall be subject to ordinary IRPEF taxation. Should an individual directly own income from a foreign source, this amount shall be considered included in the foreign income covered by the Flat Tax regime. For example, if an individual is the direct owner of assets located in Florida, the related income will be taxed in Italy only through the Flat Tax.

27. Art. 24*bis*(2) TUIR.
28. Art. 24*bis*(1) TUIR.
29. Art. 1.3 Ruling dated 8 March 2017 of the Italian Tax Authority.
30. Art. 1 Ruling dated 8 March 2017 of the Italian Tax Authority.
31. Art. 1 Ruling dated 8 March 2017 of the Italian Tax Authority.
32. Art. 24*bis*(5) TUIR.
33. Art. 1.10 Ruling dated 8 March 2017 of the Italian Tax Authority.
34. Art. 24*bis*(4) TUIR.

420457ZZO_RIP_N13_CC2021_PC.indd 22 23/11/2023 14:05:22

The same remarks apply to income deriving from cash, cash equivalent, movable or immovable properties held through a third party such as an intermediary or a company.

The Italian Tax Authority, with Note N. 17/E/2017, has clarified that "through a third party" shall be intended, in general, as any circumstance where the taxpayer does not appear to be the direct legal owner of one or more assets, but he or she is actually entitled to benefit from its eventual legal, economic and financial results.

When it comes to applying the above concept to taxable income,[35] the ownership through third parties refers to all situations where a taxpayer does not appear to be the direct beneficiary of income that look formally produced by other subjects (individuals or companies owned or connected with said taxpayer), even though from a substantial perspective he or she actually owns the income under scope.

In such circumstances, income deriving from an Italian source owned by an individual through an intermediary shall be subject to ordinary IRPEF taxation as if said individual directly produced them.

Given all the above, within the calculation of the income included in the Flat Tax regime:

- the ownership through a foreign resident intermediary of assets located in Italy implies that income deriving therein are "out" of the Flat Tax regime and subject to ordinary IRPEF taxation applicable to natural persons residing in Italy;
- instead, income deriving from foreign sources owned through an intermediary shall only be subject to the Flat Tax without additional charges.

As a direct consequence of the above, in order to determine the income included in the Flat Tax regime, all income formally produced by new residents through any intermediary whatsoever, coming both from Italian and foreign sources, have to be considered as being directly produced by the new resident, regardless of the intermediary's interposition.

The "look through approach" applicable to intermediaries implies that, regardless of the presence of an intermediary, income from Italian sources produced by new residents are subject to the Italian ordinary IRPEF taxation regime. To the opposite, income from foreign sources are included in the Flat Tax regime.

Another relevant implication of the Flat Tax regime, related to the tax residence of interposed entities, is worth pointing out. To this extent, it must be preliminarily said that the general rule set forth by Article 73 TUIR provides that the fictive interposition of an entity is disregarded when it comes to attributing and taxing income to the effective beneficial owner. Furthermore, income generated by not fictively interposed foreign entities (i.e., effectively carrying out business in the related country of residence), whose place of effective management is located in Italy, should be requalified as Italian taxable income according to Article 73 TUIR.

As far as interactions between the above general rule and the Flat Tax regime, attention must be placed on the peculiar status recognized by Article 24*bis* TUIR to new residents concerning income produced abroad, even in specific circumstances when new residents:

(i) are considered as a center of attribution for management choices of foreign operating entities; and

(ii) transfer their residence to Italy.

In such cases, the transfer to Italy under the Flat Tax regime does not imply the attraction to Italy of the tax residency of foreign entities owned and managed by the new resident according to Article 73 TUIR.

This is due to the fact that, in case a foreign entity is requalified as a tax resident in Italy under Article 73 TUIR, its income is taxed in the country of residence of the person or persons considered as a center of attribution for its management choices. Anyway, assuming that, for the present analysis, this is a subject benefitting from the Flat Tax regime, no additional taxation would be due on income originated or generated abroad. Thus, no consequence will come from an eventual requalification, according to Article 73.

2) Focus–Non-Applicability in Case of Capital Gain

Another hypothesis of non-application is aimed at avoiding the potential abusive conduct of foreign individuals who transfer their tax residence to Italy with the sole purpose of benefitting from the Flat Tax on capital gains deriving from qualified participation and then transfer their tax residence outside of Italy again. To this extent:

- Although the Flat Tax regime requisites are met, the capital gains from qualified participation before the fifth fiscal year are subject to the ordinary IRPEF regime (withholding tax of 26%).
- The five fiscal years run from the first, during which individuals transferred their tax residence to Italy. For example, if a taxpayer becomes resident in Italy in 2020, although he or she starts benefitting from the Flat Tax regime in 2021, the exclusion period expires in 2024.
- During the five years, such capital gains shall be disclosed in the personal income tax return when deriving from companies residing in blacklist countries.
- For capital gain calculation purposes, the tax value of the participation can be considered alternatively as:

  (i) the acquisition cost; or

35. Art. 37(3) Presidential Decree No. 600/1973.

420457ZZO_RIP_N13_CC2021_PC.indd 23 23/11/2023 14:05:22

(ii) the value determined for the eventual exit tax levied in the former residence country. In any case, such tax value cannot exceed the so-called market value.

3) Focus–Controlled Foreign Companies

The Italian Controlled Foreign Companies rule, deriving from the Anti-Tax Avoidance Directive (EU) 2016/1164, provides that, if an Italian subject controls an entity resident abroad (**CFC**) which:

(i) is subject to an effective tax rate in the foreign country of residence lower than 50% of the virtual Italian taxation which would have been applicable in Italy; and

(ii) realizes more than one third of its revenues through passive income, then the income of the CFC is taxed in Italy directly on the controlling subject proportionally depending on the percentage of shares or quotas owned, regardless of any effective cash distribution.

With particular reference to the Flat Tax regime, as it covers any foreign-sourced income, no implication shall arise on the new resident individual if the foreign controlled entity is qualified as a CFC. The income from controlling entities resident in foreign countries are covered by the Flat Tax, and the individual is fully exempted from providing disclosure of the CFC's income in its personal income tax return.

Despite this, if the individual owns the CFC through an Italian resident company, the Italian Controlled Foreign Companies rule shall apply to the aforementioned company.

IV. "INBOUND WORKERS" REGIME

A. Overview

The Italian legislator has implemented a favorable regime aimed at encouraging foreign resident workers to transfer their residence to Italy.

The regime under scope applies to workers who:

(i) have not been resident in Italy during the two tax periods before the transfer;

(ii) commit to residing in Italy for at least two years; and

(iii) carry out their work mainly in Italy[36] (**Inbound Workers**).

In order to be eligible for the Inbound Workers regime, Italian citizens not listed in the registry office of Italian residents abroad (**AIRE**) must have been considered residents in another State according to a convention against double taxation on income signed between Italy and such State,[37] in the two fiscal years before the transfer to Italy.

The regime applies to employment income, self-employment income and business income earned by inbound workers who set up their business in Italy starting from the tax period following the fiscal year 2019.[38]

In addition, EU citizens belonging to particular scientific and professional categories[39] can benefit from the Inbound Workers regime under the following conditions:

(i) they have continuously been resident in Italy for at least 24 months;

(ii) they have a university degree, have been continuously employed or self-employed, have carried out a business activity outside their country of origin and Italy for the last 24 months or more;

(iii) they have continuously studied outside their country of origin and Italy for the last 24 months or more, obtaining a university degree or a postgraduate specialization.[40]

Conditions (ii) and (iii) are alternatives to each other.

The Inbound Workers regime is also applicable to non-EU citizens whose country of origin has signed a convention against double taxation or a tax information exchange agreement with Italy.[41]

B. Benefits and Duration

Taxpayers who comply with the conditions mentioned above may be exempted from the tax payment of 70% of the employment income, self-employment income, and business income generated through the business activity carried on in Italy.[42]

The exemption on taxable income is increased to 90% if the taxpayers transfer their residence to one of the following Italian regions: Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardegna or Sicilia.[43]

The regime is applied as of the tax period when the residence is transferred to Italy and for the following four tax periods.[44] The regime may be extended for five additional fiscal years if the taxpayer has at least one minor or dependent child or purchases at least one residential real estate

36. Art. 16(1) Legislative Decree No. 147/2015.
37. Art. 16(5*ter*) Legislative Decree No. 147/2015.
38. Art. 16(1*bis*) Legislative Decree No. 147/2015.
39. Art. 16(2) Legislative Decree No. 147/2015: "[...] these categories are determined taking into account specific scientific and professional experience and qualifications by decree of the Ministry of Economy and Finance."
40. Art. 2(1) Law No. 238/2010.
41. Art. 16(2) Legislative Decree No. 147/2015.
42. Art. 16(1)–(2) Legislative Decree No. 147/2015.
43. Art. 16(5*bis*) Legislative Decree No. 147/2015.
44. Art. 16(3) Legislative Decree No. 147/2015.

420457ZZO_RIP_N13_CC2021_PC.indd 24 23/11/2023 14:05:22

unit in Italy after the transfer of residence or in the previous 12 months. During this extended period, the exemption on taxable income is reduced to 50% unless the taxpayer has at least three minor or dependent children, in which case the applicable exemption amounts to 90%.[45]

Furthermore, the Italian Tax Authority declared that:

(i) if the minor attains the age of majority after the return to Italy, the taxpayer does not forfeit the benefits during the extended period; and

(ii) the child must transfer their residence to Italy within the end of the extended period.[46]

C. Athletes

The Inbound Workers regime also applies to athletes, with an exemption on the taxable income reduced to 50%. Still, in order to be eligible for the regime, athletes must comply with three additional requirements other than the mandatory conditions mentioned in title A above:

(i) among others, the sport practiced must be recognized by the Italian Olympic Committee (**CONI**);

(ii) the athlete must be at least 20 years old; and

(iii) the regime applies only if the sports income is above the threshold of €500,000 or €1,000,000 depending on the specific sports federation.[47]

For the sake of completeness, it is worth clarifying that the three additional mandatory conditions did not apply to the previous version of the regime, still applicable for income deriving from sports contracts already in force as of 21 May 2022.[48]

In addition, in order to benefit from the Inbound Workers regime, the athletes must pay a 0.5% substitute tax calculated on the income tax base.[49]

D. Procedure

In order to access the Inbound Workers regime, the taxpayer must exercise a specific option, respectively:

– employees, by giving notice to the related employer, who will levy its withholding taxes from the taxable amount reduced based on the applicable exemption rate (50%, 70% or 90%);

– self-employees and entrepreneurs, alternatively:

(i) by flagging a specific field of their income tax return (deadline November 30 of the fiscal year after the closing date of the relevant tax period); or

(ii) giving notice to their clients to levy the withholding taxes on their invoices or fees reduced based on the applicable exemption rate (50%, 70% or 90%)[50].

V. "FOREIGN PENSIONERS" REGIME

A. Overview

The Budget Law 2019 introduced a special tax regime applicable for foreign pensioners as of 1 January 2019,[51] aiming at attracting individuals in the southern Italian regions affected by a drastic demographic collapse.

In order to be eligible for the regime under scope, individuals, both Italians and foreigners[52] (**Foreign Pensioners**), must:

a) be entitled to a pension payment from foreign sources;

b) result physically resident outside of Italy, in a country with whom Italy has signed mutual administrative cooperation agreements in tax matters,[53] during the five fiscal years before the application for the regime;

c) have transferred their residence to a municipality with fewer than 20,000 inhabitants, alternatively:

   i. located in the regions of Sicilia, Calabria, Sardegna, Campania, Basilicata, Abruzzo, Molise and Puglia; or

   ii. located in those affected by the 2016 earthquake; or

   iii. located in those affected by the 2009 earthquake.[54]

B. Benefits

Under the requirements mentioned above, the interested taxpayer may benefit from a substitute tax of 7% on foreign-sourced income.[55] It must be noted that although the prerequisite as per point a) above is defined based on pension income, the substitute tax applies to any income deriving from foreign sources. Instead, income generated in Italy (if any) shall be taxed under the ordinary IRPEF rates.

Furthermore, individuals benefitting from the Foreign Pensioners regime are exempted from:

(i) reporting in their personal income taxes the investments and assets held abroad (the so-called *Monitoraggio Fiscale*); and

45. Art. 16(3*bis*) Legislative Decree No. 147/2015.
46. Art. 3(1) Circular No. 33/E/2020 of the Italian Tax Authority.
47. Art. 16(5*quarter*) Legislative Decree No. 147/2015.
48. Art. 12*quater*(3) Decree Law No. 21/2022.
49. Art. 16(5*quinquies*) Legislative Decree No. 147/2015.
50. Art. 1 Ruling dated 29 March 2016 of the Italian Tax Authority.
51. Art. 1 Ruling No. 167878/2019 of the Italian Tax Authority.
52. Art. 1 Circular No. 21/2020 of the Italian Tax Authority.
53. Art. 1 Circular No. 21/2020 of the Italian Tax Authority; art. 24*ter*(3) TUIR.
54. Art. 24*ter*(1)–(2) TUIR.
55. Art. 24*ter*(1) TUIR.

420457ZZO_RIP_N13_CC2021_PC.indd 25 23/11/2023 14:05:22

(ii) the taxes on foreign assets held by Italian residents (the so-called IVIE and **IVAFE** taxes).[56]

The substitute tax must be paid in a lump sum no later than the income tax payment deadline,[57] i.e., the last day of the sixth month after the fiscal year end (i.e., June 30).

C. Procedure

In order to benefit from the regime, taxpayers must file the application by flagging the relevant field in their personal income tax return related to the fiscal year when their residence is transferred to Italy. The option applies immediately for the fiscal year when the application is filed.

Taxpayers may choose not to benefit from the Foreign Pensioners regime on income derived from certain foreign States; to this extent, they must specifically disclose the countries under scope in the tax return where the option is exercised or modified. In this case, the ordinary IRPEF regime applies to the income produced in these States.[58]

D. Duration

The benefit is available for ten consecutive fiscal years.[59] The taxpayer who has obtained the regime may revoke it at any time without any consequences on the previous tax years.[60]

The benefit ceases when the requirements for accessing the benefit are not met or are no longer satisfied and in case of total or partial failure to pay the substitute tax within the due terms.

If the taxpayer revokes or forfeits his or her right to opt for the regime, he or she will not be allowed to regain the benefit in the future.[61]

E. Death of the Beneficiary

If the beneficiary taxpayer dies before the payment of the substitute tax related to the previous year, the heirs must pay the substitute tax on behalf of the *de cuius* (deceased). In this case, the heirs may continue to benefit from the regime for the fiscal year under scope. Consequently, for the *de cuius*'s income earned as of January 1 until the date of death, the heirs shall pay the substitute tax to benefit from the Foreign Pensioners regime for the relevant tax year.

Alternatively, if the beneficiary taxpayer dies after the payment of the substitute tax related to the previous year, the heirs may decide whether to benefit from the regime by paying the relevant substitute tax for the *de cuius*'s income earned as of January 1 to the date of death[62] or not.

F. Interaction with Tax Treaties Against Double Taxation

The interaction between the Foreign Pensioners regime and the tax treaties against double taxation works as follows:

- If the pension is derived from employment activities carried out in the private sector in a country, with which Italy stipulated such tax treaty, and the relevant treaty reflects the content of Article 18 of the OECD Model Convention,[63] Italy will have the exclusive right to tax the pension. Consequently, such income will only be taxed at an overall rate of 7% according to the regime under scope.
- Conversely, if the pension is derived from government services previously carried out by the taxpayer in a State and the relevant tax treaty reflects Article 19(2)(a) of the OECD Model Convention;[64] such pension will be taxed only in that State. Consequently, Italy cannot impose any tax if the relevant taxpayer is not an Italian tax resident and citizen.

VI. THE TEACHER'S AND RESEARCHER'S REGIME

A. Overview

Finally, the Italian legislation provides a specific regime applicable to teachers and researchers who transfer their tax residence to Italy in order to work therein.[65]

The regime applies therefore to taxpayers who meet the following requirements:

(i) they have obtained a university degree or equivalent;

(ii) they have been resident abroad on a non-occasional basis;

(iii) they have carried out research or teaching activities abroad in public or private research centers or universities for at least two continuous years;

(iv) they must transfer their tax residence to Italy; and

56. Art. 6 Circular No. 21/2020 of the Italian Tax Authority.
57. Art. 24*ter*(6) TUIR.
58. Art. 24*ter*(8) TUIR.
59. Art. 24*ter*(4)–(5) TUIR.
60. Art. 24*ter*(7) TUIR; art. 8 Circular No. 21/2020 of the Italian Tax Authority.
61. Art. 24*ter*(7) TUIR.
62. Art. 10 Circular No. 21/2020 of the Italian Tax Authority.
63. According to Art. 18 OECD Model Convention: "Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State."
64. According to Art. 19(2)(a): "Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State."
65. Art. 44 Legislative Decree No. 78/2010.

420457ZZO_RIP_N13_CC2021_PC.indd 26 23/11/2023 14:05:22

(v) they must carry out teaching and research activities in Italy.[66]

Italian teachers or researchers who returned to Italy as of 31 December 2019 and at that moment are not registered in the AIRE may also benefit from this regime if, in the two tax periods before the transfer, they were residents in another State with which Italy signed a convention against double taxation on income.[67]

B. Benefits

The interested taxpayer can opt for a 90% exemption from the Italian taxation on income deriving from employment or self-employment activities. Thus, only 10% is subject to the tax rates set by Italian law.[68]

Moreover, if the income derives from self-employment activities, it will be exempted from the regional tax on productive activities (**IRAP**).[69]

C. Duration

The benefit has a duration of six consecutive fiscal years.[70] However, teachers and researchers who have already transferred their residence to Italy in the fiscal year 2020 can benefit from the regime:

(i) for eight fiscal years, if the interested taxpayer has a minor or dependent child, including in pre-adoptive foster care, or becomes the owner of a residential real estate in Italy after the transfer or in the 12 months preceding the transfer of residence (acquired directly by the researcher or teacher or by his or her spouse, partner or children, or in co-ownership);

(ii) for 11 fiscal years, if the taxpayer has at least two minor or dependent children, also in pre-adoptive foster care; and

(iii) for 13 fiscal years, if the taxpayer has at least three minor or dependent children, also in pre-adoptive foster care.[71]

In all the above cases, taxpayers forfeit the benefit if their residence is transferred outside Italy.[72]

VII. RECAP TABLE

Below is a recap table providing a very high-level summary of the above-mentioned regimes.

Main Features				
	Res non-dom	Inbound workers	Foreign Pensioners	Teachers and Researchers
Conditions	Individuals being resident outside of Italy for at least nine out of ten previous FYs, transferring their tax residence to Italy	Individuals being resident outside of Italy for the last two FYs, transferring their tax residence to Italy in order to perform their business activity therein	Individuals entitled to pension payment sourced abroad, being resident outside of Italy for at least five FYs, transferring their tax residence to of Sicilia, Calabria, Sardegna, Campania, Basilicata, Abruzzo, Molise and Puglia or the regions affected by the earthquakes of 2009 and 2016	Individuals being resident outside of Italy for the last two FYs, transferring their tax residence to Italy in order to perform researching or teaching activities.
Benefits	Flat tax up to €100,000	Income Tax base forfeit reduction (10%, 30% or 50%)	Flat Tax 7%	Income Tax base forfeit reduction 10%
Eligible income	Foreign income	Italian income	Foreign income	Italian income
Timing	Up to 15 FYs, with no possibility for renewal	Up to five FYs, with the possibility to extend for an additional five FYs under certain conditions	Up to ten FYs, with no possibility for renewal	Up to six FYs, with the possibility to extend for an additional 8, 11 or 13 FYs under certain conditions

66. Art. 44(1) Legislative Decree No. 78/2010.
67. Art. 44(3*quarter*) Legislative Decree No. 78/2010.
68. Art. 44(1) Legislative Decree No. 78/2010.
69. Art. 44(2) Legislative Decree No. 78/2010.
70. Art. 44(3) Legislative Decree No. 78/2010.
71. Art. 44(3*ter*) Legislative Decree No. 78/2010; Art. 2 Circular No. 17/E 2020 of the Italian Tax Authority.
72. Art. 44(3) Legislative Decree No. 78/2010; Art. 44(3*ter*) Legislative Decree No. 78/2010; Art. 44(4*quarter*) Legislative Decree No. 78/2010.

420457ZZO_RIP_N13_CC2021_PC.indd 27 23/11/2023 14:05:22